THE HON'BLE SRI JUSTICE C.V. RAMULU

Friday, 11th August, 2006

W.P.No.7473 of 2004

Between:

Smt. K. Sulochana Rani … Petitioner

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The Director of Civil Supplies,
A.P. State Civil Supplies Bhavan,
Somajiguda, Hyderabad and another … Respondents

THE HON'BLE SRI JUSTICE C.V. RAMULU

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O R D E R:

This Writ Petition is filed seeking a Mandamus declaring the Proceedings of the 1st respondent dated 31-3-2004, wherein the Proceedings dated 31-12-2002 of the 2nd respondent were confirmed, as arbitrary and illegal and consequently to direct the respondents to continue the petitioner as wholesale kerosene dealer.

It is the case of the petitioner that she is the Proprietrix and wholesale kerosene dealer of M/s.Durga Agencies, Labbipet, Vijayawada. She has been distributing kerosene without any blemish from any quarter for the last two years. While so, on 24-11-2002, she had drawn kerosene in an oil tanker from Kondapalli Filling Station. In order to bring the labour to distribute the same to the retailers, the Manager along with the driver of the lorry went to the other side of Krishna Barrage, which is in Guntur district. At that time, the Central Excise Police, Guntur had seized the vehicle and handed over the same to the Revenue Officials of Guntur District on the allegation that the stocks of kerosene are being diverted to black market and initiated proceedings under Section 6-A of the Essential Commodities Act,1955 (for short 'the Act') by the Joint Collector, Guntur. The Joint Collector, Guntur, by his Order dated 10-1-2002 confiscated the seized stocks as well as the vehicle. Questioning the same, she preferred an appeal being Criminal Appeal No.40 of 2002 on the file of the learned

Principal Sessions Judge, Guntur and the same is pending. In the meanwhile, she was served with a notice dated 24-12-2001 by the 2nd respondent seeking explanation as to why the licence held by her should not be cancelled in terms of Clause 28(1) of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980. She submitted a detailed explanation and requested to drop the proceedings. However, the 2nd respondent by an Order dated 13-12-2002 cancelled her licence and also forfeited the security deposit solely basing on the findings given by the Joint Collector, Guntur, without considering the explanation submitted by her. Challenging the same, she preferred an appeal before the 1st respondent; however, the same was dismissed on 31-3-2004 holding that the Proceedings under Section 6-A of the Act and the proceedings under the Control Orders are different and cannot be linked with each other. Having held so, the 1st respondent without considering the grounds raised by her dismissed the appeal. Assailing the said Orders, the present Writ Petition is filed.

Respondent No.2 filed a detailed counter affidavit denying the allegations made by the petitioner and supporting the impugned Orders. It is *inter alia* stated that the 2nd respondent passed the impugned Order in accordance with the provisions of Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980 and the same was rightly confirmed by the appellate authority. The petitioner has not raised any grounds warranting interference of this Court under Article 226 of the Constitution of India. The Writ Petition is liable to be dismissed.

Sri E. Manohar, learned senior counsel appearing for the petitioner, strenuously contended that the explanation offered by the

petitioner to the show cause notice issued by the 2nd respondent on 24-12-2001 was not properly considered. Further, the 2nd respondent solely relied upon the Proceedings under Section 6-A of the Act concluded before the Joint Collector, Guntur District. It is unfortunate that the 1st respondent-appellate authority having held that the 2nd respondent was not right in relying upon the Proceedings under Section 6-A of the Act, and the Proceedings under Section 6-A of the Act and the Proceedings under Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980 are separate and one cannot be linked to the other, has confirmed the Order passed by the 2nd respondent, taking into consideration some misquotings here and there. Therefore, the impugned Proceedings dated 31-12-2002 of the 2nd respondent as confirmed by the 1st respondent in the Proceedings dated 31-3-2004 are liable to be set aside. Learned senior counsel, in this regard, taken the Court through the show cause notice issued by the 2nd respondent, the explanation submitted by the petitioner and the conclusions reached by the respondents in the impugned Orders.

Per contra, learned Government Pleader appearing for the respondents strenuously contended that absolutely there was no satisfactory explanation submitted by the petitioner to the show cause notice as to the diversion of kerosene oil to an area in Guntur District and the story of the petitioner that for supplying the kerosene to the retailers, they required 'hamalies'; therefore, the Manager and the driver took the lorry beyond Krishna Barrage is only an after thought and the same was rightly not accepted by the 2nd respondent. The primary authority-2nd respondent as well as the appellate authority-1st respondent have considered the matter in detail and no ground is

made out to interfere with such orders of the respondents.

I have given my earnest consideration to the respective submissions made by the learned counsel on either side and perused the impugned Orders and other material made available on record.

At the outset, I am of the opinion that though eight (8) charges were framed and explanation was offered from the petitioner, nothing has been considered by the 2nd respondent in detail. The whole of the 2nd respondent's Order dated 31-12-2002 is based on the Order passed by the Joint Collector, Guntur dated 10-1-2002 wherein it was observed that 'the driver of the oil tanker has failed to produce invoice issued by the IOC authorities for the 12KL of Kerosene Oil stocks delivered into the tanker bearing No.AEW 465 at the time of seizure and also confessed before the inspecting staff that he had handed over all the documents pertaining to the load of 12KL Kerosene to the clerks of the wholesale dealer at Vijayawada and as per instructions of the dealer, proceeded to Tenali for giving delivery of kerosene oil at Tenali.' Respondent No.2 held that diversion of kerosene oil to the black market was clearly established in the enquiry and on perusal of the explanation of the petitioner, it was concluded that Form-B licence issued to her required cancellation. Except this, nothing is stated in the impugned Order of the 2nd respondent. In fact, in the very charge sheet at charge No.8, it was stated "the accused has contravened Clause 26 of A.P. Petroleum Products (L&RS) Order,1980 and also failed to transport the kerosene to the destination as shown in the invoice issued by Oil Company and thereby contravened clause 4(1) of the Kerosene (Restriction on use and fixation of ceiling price) Order,1993". For this, the explanation offered by the petitioner was that the driver of the tanker might not have shown the invoice given to him to the Inspecting Officers due to fear and confusion; as such, the

question of violation of Clause 26 of Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980 does not arise. Further, she stated that due to the seizure of the tanker along with the kerosene therein by the Mandal Revenue Officer, Tadepalli, she could not distribute the kerosene to the retailers and she also reported the facts to the higher authorities including the 2nd respondent on 30-11-2001; as such, the question of violation of Clause 4(1) of the Kerosene (Restriction on use and fixation of ceiling price) Order,1993 does not arise. This itself shows that the invoice was available and the invoice shows the destination to which the kerosene has to be taken, but the same was not at all discussed or considered by the 2nd respondent in the impugned Order. Further, the petitioner had asserted that on 30-11-2001 itself she reported the facts to the higher authorities and requested them to inspect the shop and note down the position and in view of the seizure of the lorry, there was no stock available with her; therefore, she has not mentioned the same in the stock register. In fact, on the representation of the petitioner, a Special Deputy Tahsildar visited the place and conducted an inspection on 3-12-2001. As such, the question of recording the stocks, which were loaded into the tanker seized by the authorities at Guntur District does not arise. This was also not considered by the authorities. The other charges are general in nature. Further, the 2nd respondent solely relied upon the Orders of the Joint Collector, Guntur dated 10-1-2002, which does not form part of the charges and passed the impugned order of cancellation of licence of the petitioner. On appeal, the 1st respondent, though agreed with the arguments of the learned counsel for the petitioner that the Proceedings under Section 6-A of the Act and the Proceedings under the Andhra Pradesh Petroleum Products

(Licensing and Regulation of Supplies) Order,1980 are separate and they cannot be linked together, instead of remanding the matter, he took up some misquotings here and there as to opening balance on 1-12-2001 in the stock register and stated that the petitioner has not maintained the true and correct books of accounts with *mala fide* intention to divert the kerosene stocks by transporting to outside the district border without permission of the licensing authority. The variation of the stock itself shows that the petitioner has not maintained the true and correct accounts and thus violated Clause 12(1)(ii) of Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980. Further, it is unfortunate that both the authorities without there being any specific charge and findings have come to the conclusion that the fact that the stocks are being diverted to black market is clearly established in the enquiry. Thus, the findings recorded by both the authorities are contrary to the evidence available on record. Therefore, the Order passed by the 2nd respondent dated 31-12-2002 as confirmed by the 1st respondent in his Proceedings dated 31-3-2004 are liable to be set aside and are accordingly set aside.

Generally speaking in a case like this, the matter should go back to the authorities for reconsideration. But, now it is more than 3½ years since the date of cancellation of licence of the petitioner, I am of the opinion that the matter can be given a quietus here itself. The period for which she was put out of business can be treated as suspension as a measure of punishment under Clause 28(1) of the Andhra Pradesh Petroleum Products (Licensing and Regulation of Supplies) Order,1980 for the irregularities committed by her, in this regard.

Accordingly, the Writ Petition is allowed and the respondents

are directed to restore the wholesale kerosene oil dealer licence of the petitioner forthwith. No order as to costs.

11-8-2006

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